already been made on the date of the alleged interview and there was no need for the respondent to raise any loan. In the result, after considering the conflict of evidence regarding certain documents, the judge came to the conclusion that "on the preponderance of evidence the learned magistrate was wrong in coming to the conclusion that there was an oral agreement between the respondents and the appellant".

With respect, we do not think that he was justified in substituting his own opinion for that of the magistrate "where the credibility or reliability of one or more witnesses has been in dispute, and where a decision on these matters has led the trial judge to come to his decision as a whole,": see *Benmax v. Austin Motor Co. Ltd.*,[1] *per* Lord Reid. Citing *Thomas v. Thomas*[2] his Lordship recalled this passage from the speech of Lord Thankerton:—

"Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion."

It may be observed that the magistrate did find as a fact that the building contractor had absconded. In our view there were no sufficient grounds for the judge to come to a conclusion which contradicted this finding of fact. If it was true that the contractor was still around, and the payment for electrical installation was his responsibility under the contract, why, it may be asked, had the respondent to offer his wife as guarantor to the firm supplying the appellants with the materials required for the job?

Having perused the whole of the evidence we must say, with all respect, that the judgment of the learned magistrate should be restored. The appellants will be entitled to costs throughout.

Appeal allowed.

Solicitors: *D.A. Devadason; Allen, Gledhill & Ball.*

TEE THAN SONG v. CALTEX OIL MALAYSIA LTD.

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) September 10, 1969]

[Kuala Lumpur—Federal Court Civil Appeal No. X. 51 of 1969]

Practice and Procedure — Injunction — Interlocutory injunction — Granting of — Licence to carry on service station — Termination of.

Licence — Termination of — Whether licensee entitled to rely on equitable relief.

This was an appeal against the order of the High Court ([1969] 2 M.L.J. 184) granting an interlocutory injunction restraining the appellant, his servants and agents from remaining on the respondents' service station. The respondents had entered into an agreement with the appellant whereby the appellant was granted a licence to occupy the service station. This licence had been terminated by the respondents. On appeal,

Held, dismissing the appeal: on the revocation of the licence the appellant became a trespasser on the premises and the learned trial judge was correct in granting the interim injunction.

Cases referred to:—

(1) *Campbell Discount Co. Ltd.* v. *Bridge* [1962] A.C. 600, 614.

(2) *Thomson* v. *Park* [1944] 1 K.B. 408, 410.

(3) *Wood* v. *Leadbitter* (1845), 13 M. & W. 838.

(4) *Kerrison* v. *Smith* [1897] 2 Q.B. 445.

FEDERAL COURT

Dato' Athi Nahappan for the appellant.

Harry Elias for the respondents.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): This is an appeal against an order of the High Court granting an interlocutory injunction restraining the appellant his servants and agents from remaining upon the respondents' service station or removing any equipment therefrom until determination of the action between these parties.

Caltex, the respondents, are owners of a service station on Cheras Road, Kuala Lumpur. In August 1963 they entered into an agreement with the appellant whereby he was granted a licence "as a vendor of the company's products to enter upon and use the service station in common with the company during the continuance of this agreement solely and entirely for the purpose of carrying on the retail sale of the company's products at the service station subject to the terms and conditions contained in this agreement". By clause 16 it was provided that the agreement "may be terminated by either party on giving to the other 30 days previous notice to that effect, whereupon the licensee shall leave the premises within 30 days from the date of the receipt of the said notice by either party".

In November 1963 a second agreement was made between the parties for the loan of machinery and servicing equipment required for operating the service station. Clause 3(1) provided that the agreement "may be terminated by the company at any time giving to the licensees not less than 30 days previous notice in writing".

Pursuant to these clauses in the two agreements Caltex gave the appellant notice in

writing dated September 25, 1968 terminating the agreements on October 31, 1968. Upon his failure to comply, a second notice dated December 28, 1968 was given to take effect on January 31, 1969. As the appellant still paid no heed thereto, action was commenced on March 11, 1969 by Caltex who applied also for an interlocutory injunction. The injunction sought was granted on April 21, 1969.

Without going fully into the facts and the merits at this stage, one thing is perfectly clear. Caltex had twice given the stipulated notice terminating the appellant's licence to occupy and use the company's service station. In fact he had been given more than three months notice to vacate. If the second notice was valid, the appellant became a trespasser on the company's premises after January 31, 1969. He maintained, however, in his affidavit in reply, that the notice was bad in law, that he should have been given reasonable notice and that the agreement had not been terminated by reason of a "collateral promise". It was alleged that he did not understand English — the language of the contract; he was not explained the terms thereof and he was assured by an official of Caltex that in the unlikely event of the company terminating the agreements he would be given reasonably lengthy notice so as to enable him to wind up his business and collect outstanding debts from his customers. As a further ground why the interlocutory injunction should not be granted, he pleaded that the terms of the agreement were oppressive; if he was required to comply with the said 30 days notice he would be placed in acute hardship which he did not foresee, whereas non-compliance would involve no such hardship on the company.

The simple answer is that every man should be held to his bargain if there is a concluded agreement and the terms are clear. It is implicit from what the appellant has himself stated in his affidavit, that the sufficiency of 30 days notice was on his mind when he signed the agreement. He was therefore fully aware of the stipulations as to notice. The agreement being in writing, parole evidence contradicting, varying, adding to or subtracting its terms is inadmissible by virtue of section 92 of the Evidence Ordinance. Equitable relief is out of the question. As Viscount Simonds said in *Campbell Discount Co. Ltd. v. Bridge*[1]:-

"I must dissent, as Harman L.J. did, from the suggestion that there is a general principle of equity which justifies the court in relieving a party to any bargain if in the event it operates hardly against him. In particular cases, for example, of expectant heirs or of fiduciary relationship, a court of equity (and now any court) will if the circumstances justify it, grant relief. So also if there is duress or fraud 'which unravels all'. In the present case there is nothing which would justify the court in granting relief ....."

A case closely parallel to this is *Thompson v. Park*,[2] where the owner of premises had revoked a licence to use them granted to another person and an interim injunction was granted to restrain the former licensee from trespassing on the premises, even though he might have a claim for damages for breach of contract against the owner of the premises in respect of the revocation of the licence. In my view the judgment of Goddard L.J. is so peculiarly appropriate that I would quote it *in extenso*:—

"It is a strange argument to address to a court of law that we ought to help the defendant who has trespassed and got himself into these premises in the way in which he has done and to say that that would be preserving the *status quo* and a good reason for not granting an injunction. The strength of the argument which was put forward on the defendant's behalf was that, assuming that there had been a breach of contract on the part of the plaintiff, the defendant had a right to be where he was. That is an entire misconception of the legal position, which was that the defendant was a licensee on the premises. That licence has been withdrawn. Whether it has been rightly withdrawn or wrongly withdrawn matters nothing for this purpose. The licensee, once his licence is withdrawn, has no right to re-enter on the land. If he does, he is a common trespasser. The law is properly laid down in the following passage in *Salmond on Torts*, 9th ed., p. 258: 'He who is ejected from land by the licensor in breach of his licence, or is otherwise disturbed by the licensor in the exercise of it, has even at common law, and notwithstanding *Wood v. Leadbitter*,[3] a good cause of action in contract' — see *Kerrison v. Smith*[4] — 'If, however, the licensee insists, notwithstanding the revocation of his licence (even though it is thus premature and wrongful) in entering or remaining on the land or in otherwise exercising his licence, he becomes at common law a trespasser or other wrongdoer, and liable in an action accordingly at the suit of the licensor. The rule is an illustration of the difference between a legal *power* to do a thing effectively and a legal *right* or *liberty* to do it lawfully. A licensor has at common law the power to revoke the licence at any time, but he has no right to revoke it before the expiration of the term'. As this is an interlocutory proceeding it is convenient, instead of going through a large number of cases, simply to state the opinion of a leading text-book writer of great authority with which I entirely agree."

The principles upon which an interlocutory injunction are granted in this country are the same as in England. I am not satisfied that the learned judge has erred in any way in exercising his discretion as he did. For my part I would dismiss the appeal with costs.

Gill and Ali F.JJ. concurred.

Appeal dismissed.

Solicitors: *Dato' Athi Nahappan; Shearn, Delamore & Co.*